

When you or the treating physician suspects the injured worker may be magnifying his symptoms or malingering, order surveillance to be conducted over several days. It may be wise to schedule the surveillance on the day of, or very near the date of a visit to his treating physician. Have the physician question the injured worker regarding his pain level and physical abilities. Surveillance conducted the same day may prove otherwise. Be sure to make contact with the employee and question him about his ability to do any of the activities you find through surveillance. Remember, as long as an employee is not doing any activity outside of the limitations set by his physician or does not deny any of the physical activity discovered by surveillance, he is not misrepresenting himself and may not be committing workers' compensation fraud.

**When fraud is discovered**

The first thing to remember when you feel you may have uncovered fraudulent activity, is **not** to terminate benefits. Workers' compensation benefits should only be terminated by a workers' compensation hearing officer when there is no release to return to work by a physician. You may be held arbitrary and capricious and assessed penalties for terminating benefits if a determination of fraud is not made by the hearing officer or by the criminal court system. To avoid such penalties, you must file a Disputed Claim for Compensation (Form LDOL-WC 1008) in the workers' compensation district office.

When you suspect workers' compensation fraud, you must report the information to the Office of Workers' Compensation. The Fraud Claims Section will compile all of the evidence you may have in addition to obtaining additional documentation to support your claim of fraud for criminal prosecution. You will be contacted by a member of the fraud staff if additional documentation is necessary. Some of the documentation that may be requested would include:

- a cover letter outlining the allegations of misrepresentations made,
- the Employee's Certificate of Compliance (Form LDOL-WC 1025.EE) which should have been signed by the injured worker at the onset of his claim,
- copies of Employee Monthly Report of Earnings (Form LDOL-WC 1020) signed by the injured worker,
- copies of medical reports,
- a list of payments made to the injured workers as well as copies of canceled indemnity checks paid to the injured worker beginning with the period of fraudulent activity,
- surveillance video and corresponding investigator's reports, if applicable,
- copies of any depositions and/or recorded statements made by the injured worker and witnesses, and
- any other documentation or evidence that shows a willful misrepresentation made by the injured worker in order to obtain workers' compensation benefits.

All services provided by the Office of Workers' Compensation are free of charge. We will help you recover loss funds caused by workers' compensation fraud. If you need assistance or have any questions about what you feel may be a fraudulent claim, contact the Fraud Claims Section at 225-342-7558, or by calling our Nation-Wide Toll Free Fraud Hotline at 1-800-201-3362. You may also email any questions you have to [WCFraud@ldol.state.la.us](mailto:WCFraud@ldol.state.la.us). For more information, visit our website [www.LAWWORKS.net](http://www.LAWWORKS.net).

# Fighting Workers' Compensation Fraud in Louisiana

## An Adjuster's Guide

## **An Adjuster's Guide to Fighting Workers' Compensation Fraud in Louisiana**

The numbers of workers' compensation claims are increasing daily. With the workload of the adjuster increasing, sometimes it's hard to manage a claim properly and see any of the warning signs that a claim has become, or has the potential to become fraudulent.

Workers' Compensation fraud is the willful or intentional act of making a false statement or representation in order to obtain or defeat any benefit payment. Following is a brief outline that will help you maintain the integrity of workers' compensation claims and reduce fraud and abuse in Louisiana.

Any questions you may have that are not covered here may be addressed to the Fraud Section by calling toll free 1-800-201-3362, or by visiting our website [www.LAWWORKS.net](http://www.LAWWORKS.net). Copies of all forms mentioned in the text can be found by visiting the forms index of our website.

### **The injury is reported**

When you receive a report of injury, you should immediately contact the employer for details surrounding the accident. A detailed statement should be taken from the employer, the individual who the injury was reported to, and any witnesses to the accident. Be sure to obtain full names and addresses of any witnesses. Pay particular attention to dates, times, and details surrounding the incident.

Your initial interview with the injured worker should be done in person if at all possible. Otherwise, you should conduct a recorded telephone interview. Ask the injured worker to explain the details leading up to and the cause of the accident. When a claim is fraudulent at the onset, details will tend to change, so ask these questions again throughout the interview. You should inquire into the injured worker's medical history, paying close attention to injuries of a similar nature and to the same body part. Ask the injured worker about any medical treatment he has received for this particular injury and what the doctor's diagnosis was. Inquire as to when the worker expected to be released to return to work. Inquire as to whether or not he has a second job and if so, is he still able to perform duties associated with that job.

### **Required OWCA forms...who files and when**

The OWCA, with the assistance of the State's Attorney General's Office, has developed several forms that are pertinent in the prevention, detection, and successful prosecution of workers' compensation fraud. At the onset of every claim, you should mail an Employee's Certificate of Compliance (Form LDOL-WC 1025.EE) to the injured worker. This form outlines the injured workers' rights and responsibilities while receiving workers' compensation benefits along with civil and criminal penalties associated with violations. During your initial contact with the employee, you should discuss this form with him and review its contents. The form should be signed by the injured worker and remain with his claim file at all times. The workers' compensation statute states that benefits may be temporarily suspended by the hearing officer if the form is not returned to the insurer within 14 days of its receipt.

Whenever an injured worker has received indemnity benefits for more than 30 days, he is required to submit reports of income at least quarterly to his insurer. The Employee's Monthly Report of Earnings (Form LDOL-WC 1020) and Employee's Quarterly Report of Earnings (Form LDOL-WC 1026) ask detailed questions regarding the injured workers' receipt of any type of income and employment activity ranging from unemployment insurance and social security benefits to volunteer work. These forms explain criminal and civil penalties for misrepresenting any information on the form. Again, the injured worker's benefits may be temporarily suspended for his failure to return these forms in a timely manner.

At this time, the OWCA does not provide a standard form for reporting mileage for reimbursement by the insurer. We suggest that the insurer create a form that requires the injured worker to provide as much information as possible regarding each entry he submits for reimbursement. Each entry should include the complete address of the starting point and destination, the person or place visited, the purpose of the visit, and the number of miles traveled. The form should be signed by the injured worker and also include a warning against making any false statements or representations.

### **Open lines of communication**

Keeping in touch with the injured worker on a regular basis is very important to the productivity of your case. You should treat the injured worker with respect and assure him that you are available to help him and answer any questions he may have. Ask specific questions each time you speak with him regarding his medical condition and the type of medical treatment his healthcare provider is recommending. Ask the injured worker about his current employment status, and if he has a possible return to work date. Discuss with the claimant what his daily activities include. An injured worker is less likely to commit fraud when he knows the insurer is monitoring his activities. Verbally advise the injured worker of his duty to report any changes in his medical condition and work status as well as the penalties for his failure to do so. Be sure you document every conversation you have with the injured worker. Your adjuster's notes can be used as evidence in court to prove a charge of misrepresentation.

### **When the claim becomes fraudulent**

When you have reason to believe a claim has become fraudulent, you should obtain as much information as possible about the claimant's alleged fraudulent activity before you proceed with ordering any type of surveillance or activity checks. Contact the claimant under the guise of inquiring about his medical condition and any physical limitations he may have. Ask about his daily routine and abilities. If you do feel surveillance is necessary, choose a reputable firm if you do not have an in-house investigative unit. Discuss with the investigator your concerns and suspicions about the injured worker. If you feel the claimant may be working during the day, order surveillance during the daytime hours. Likewise, if you feel he may be working at night, order surveillance for the evening and nighttime hours. Be sure you are supplied with a high quality product from the investigator as well as a detailed outline of his activities. After you receive any surveillance tapes, be sure to review them to determine if definite identification of the claimant has been made and that any reports submitted with the tapes correspond with the actual video footage.